



# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, PE, Chair

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Arnold  
Schwarzenegger  
Governor

Linda S. Adams  
Secretary for  
Environmental Protection

<b>APPROVED</b>
_____
Staff
_____
Senior

30 March 2009

Mr. Virgil Koehne, General Manager  
Town of Discovery Bay  
1800 Willow Lake Road  
Discovery Bay, CA 94505

CERTIFIED MAIL  
7008 1140 0002 8805 9566

## **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0525 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, TOWN OF DISCOVERY BAY WASTEWATER TREATMENT PLANT, CONTRA COSTA COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order R5-2003-0067 (NPDES No. CA0078590) by the Town of Discovery Bay (Discharger). The Complaint charges the Discharger with civil liability in the amount of **fifty-four thousand dollars (\$54,000)**, which represents the sum of accrued Mandatory Minimum Penalties (MMPs) for effluent limitation violations which occurred from 1 January 2008 through 31 December 2008.

On 24 February 2009, Central Valley Water Board staff issued a draft Record of Violations (ROV) covering the period from 1 April 2004 through 31 December 2008. The Discharger responded on 9 March 2009. Based upon the Discharger's comments and further staff analysis, the number of violations was adjusted and the violations are now solely for 1 January 2008 through 31 December 2008.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **29 April 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting both the waiver and either (a) a letter describing the issues to be discussed, or (b) a SEP proposal that contains the information described below to this office by **29 April 2009**; **or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which

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time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

As described in CWC section 13385(l)(1), a maximum of \$34,500 of this liability may be applied to a Supplemental Environmental Proposal (SEP). Any proposal for a SEP must include information showing how it meets the criteria of the State Water Board's February 2009 *Policy on Supplemental Environmental Projects*, and must include a project description, timeline, deliverables, and budget. In accordance with the Policy, the Central Valley Water Board may require the payment of staff oversight costs in addition to the base penalty, or may require the City to hire a third-party auditor to oversee expenditure of SEP funds. In the event that a SEP is approved, Central Valley Water Board staff will develop an ACL Order memorializing the settlement. This Order will then be subject to a new 30-day comment period, during which time interested parties may comment on the action.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 29 April 2009**), then a hearing will be scheduled for the **11/12 June 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has proposed the enclosed draft Hearing Procedures to govern the conduct of such a hearing. Any objections to these draft Hearing Procedures must be received by Lori Okun, whose contact information is listed in the enclosed draft Hearing Procedures, by **5 p.m. on 10 April 2009**.

Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the enclosed draft Hearing Procedures, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at [http://www.waterboards.ca.gov/centralvalley/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/tentative_orders/). Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762.

WENDY WYELS

Supervisor

Compliance and Enforcement Section

Enclosure: ACLC R5-2009-0525  
Draft Hearing Procedure  
Hearing Waiver

cc w/o encl: Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco  
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento  
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova  
Contra Costa County Health Department, Alameda  
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton